



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDS, FF

### Introduction

On February 1, 2017, the tenants' application for dispute resolution was heard, granting the tenants a monetary order for return of double the security deposit.

On February 10, 2017, the landlord made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control.

The Arbitrator ordered the parties to participate in a new hearing, and the original decision and order were suspended. At the new hearing the Arbitrator may confirm, vary or set aside the original decision and orders.

This new hearing dealt with an Application for Dispute Resolution by the tenants to for return of double the security deposit and recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Issue to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The parties agreed that the tenancy began on June 1, 2016. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants.

The tenant testified that they vacated the premises on October 31, 2016. The tenant stated that they provided the landlord with a written notice of their forwarding address by

letter dated November 9, 2016. The tenant stated they did not authorize the landlord to retain any amount from the security deposit. Filed in evidence is a copy of the letter requesting the return of the security deposit.

The landlord testified that they received the tenants forwarding address as stated by the tenant. The landlord stated that they did not return the security deposit and they have not make an application claiming against the security deposit. The landlord stated that they thought they had an agreement to keep the deposit. The landlord stated that this was not in writing.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **Return of security deposit and pet damage deposit**

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlord confirmed that they had the tenants forwarding address which was given on November 9, 2016. The landlord confirmed they did not return the deposit or make an application claiming against the deposit within 15 days as required by the Act. The landlord confirmed they did not have written permission of the tenants to keep any amount of the security deposit.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord was not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$2,100.00** comprised of double the security deposit (\$1,000.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

As I have arrived at the same conclusion that was made by the Arbitrator at the original hearing. I find it appropriate to confirm the original decision and order made on February 1, 2017.

Should the landlord fail to comply with the order, the original order may be filed in the small claims division of the Provincial Court and enforced as an order of that court. The

**landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

It should be noted that the landlord wanted to argue the issue of damages to the rental unit at the hearing. However, that matter was not before as the landlord has not made an application. The only issue for me to determine at today's hearing was the tenants' application and whether the landlord complied with section 38 of the Act, which I found they did not.

### Conclusion

The original decision and order made on February 1, 2017, are confirmed and remain in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 15, 2017

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Residential Tenancy Branch